

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2595

Introduced by Assembly Member Huffman

February 19, 2010

An act to *amend Section 12979 of the Food and Agricultural Code, and to amend Section 13269 of the Water Code, relating to water quality irrigated agriculture.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as amended, Huffman. ~~Water quality: Irrigated agriculture: pesticide use: operator identification number: water quality: waste discharge requirements: waivers.~~

Existing law regulates pesticide use, as specified, and provides that a pesticide use report shall be submitted to the county agricultural commissioner or the Director of Pesticide Regulation, as specified, for use in the setting of priorities for, among other things, pesticide use enforcement and pest control research, environmental monitoring, and public health monitoring and research. Existing regulations provide that prior to the purchase or use of pesticides for the production of an agricultural commodity, the operator of the property, or the operator's authorized representative, shall obtain an operator identification number for pesticide use from the county agricultural commissioner of each county where pest control work will be performed.

This bill would codify requirement and would provide, with a specified exception, that, on and after January 1, 2012, as a condition of issuing an operator identification number for pesticide use, the county agricultural commissioner shall verify that the operator has been issued either waste discharge requirements or a waiver, as specified. By

imposing new requirements on county agricultural commissioners, this bill would impose a state-mandated local program.

Existing law, the Porter-Cologne Water Quality Control Act, authorizes the State Water Resources Control Board and a California regional water quality control board to waive certain waste discharge requirements as to a specific discharge or type of discharge if the state board or the regional board makes a specified determination. Existing law authorizes the state board or a regional board to waive the monitoring requirements for discharges that it determines do not pose a significant threat to water quality.

This bill would require the State Water Resources Control Board or a California regional water quality control board to provide evidence to the Department of Pesticide Regulation and the county agricultural commissioners that an operator of a property has been issued a waiver under the waste discharge provisions, in order to support implementation of the provisions relating to the issuance of an operator identification number for pesticide use. The bill would also make a technical, nonsubstantive change to that authorization the provisions. By imposing new requirements on regional water quality control boards, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 12979 of the Food and Agricultural Code*
2 *is amended to read:*

3 12979. (a) A pesticide use report shall be submitted to the
4 commissioner or director on a form and in a manner prescribed
5 by the director. The data from the pesticide use reports shall be
6 considered in setting priorities for food monitoring, pesticide use
7 enforcement, farm worker safety programs, environmental

1 monitoring, pest control research, public health monitoring and
2 research, and similar activities by the department, or by the
3 department in cooperation with other state, regional, or local
4 agencies with appropriate authority.

5 *(b) Pursuant to Section 6622 of Title 3 of the California Code*
6 *of Regulations, or any successor regulation, prior to the purchase*
7 *or use of pesticides for the production of an agricultural*
8 *commodity, the operator of the property, or the operator's*
9 *authorized representative, shall obtain an operator identification*
10 *number for pesticide use from the county agricultural commissioner*
11 *of each county where pest control work will be performed.*

12 *(c) As of January 1, 2012, as a condition of issuing an operator*
13 *identification number for pesticide use pursuant to subdivision*
14 *(b), the county agricultural commissioner shall verify that the*
15 *operator has been issued either waste discharge requirements*
16 *pursuant to Section 13263 of the Water Code or a waiver pursuant*
17 *to Section 13269 of the Water Code. This requirement shall not*
18 *apply in any county for which the regional water quality control*
19 *board has not adopted requirements relating to irrigated*
20 *agriculture.*

21 *(d) The director may adopt regulations to carry out the*
22 *provisions of this section. The director shall consult with the State*
23 *Water Resources Control Board and with county agricultural*
24 *commissioners in the development of regulations relating to*
25 *subdivision (c) in order to ensure that any requirements imposed*
26 *shall result in minimal disruption to the process of issuing operator*
27 *identification numbers for pesticide use.*

28 **SECTION 1.**

29 **SEC. 2.** Section 13269 of the Water Code is amended to read:

30 13269. (a) (1) On and after January 1, 2000, the provisions
31 of subdivisions (a) and (c) of Section 13260, subdivision (a) of
32 Section 13263, or subdivision (a) of Section 13264 may be waived
33 by the state board or a regional board as to a specific discharge or
34 type of discharge if the state board or a regional board determines,
35 after any necessary state board or regional board meeting, that the
36 waiver is consistent with any applicable state or regional water
37 quality control plan and is in the public interest. The state board
38 or a regional board shall give notice of any necessary meeting by
39 publication pursuant to Section 11125 of the Government Code.

(2) A waiver shall not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver shall be conditional and may be terminated at any time by the state board or a regional board. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except as provided in paragraph (3). Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

(3) The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

(4) The state board or a regional board shall provide evidence to the Department of Pesticide Regulation and the county agricultural commissioners that an operator of a property has been issued a waiver under this section, in order to support implementation of subdivision (c) of Section 12979 of the Food and Agricultural Code.

~~(4)~~

(5) (A) The state board or a regional board may include as a condition of a waiver the payment of an annual fee established by the state board in accordance with subdivision (f) of Section 13260.

(B) Funds generated by the payment of the fee shall be deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, by the state board or appropriate regional board for the purpose of carrying out activities limited to those necessary to establish and implement the waiver program pursuant to this section. The total amount of annual fees collected pursuant to this section shall not exceed the costs of those activities necessary to establish and implement waivers of waste discharge requirements pursuant to this section.

1 (C) In establishing the amount of a fee that may be imposed on
2 irrigated agriculture operations pursuant to this section, the state
3 board shall consider relevant factors, including, but not limited to,
4 all of the following:

- 5 (i) The size of the operations.
- 6 (ii) Any compliance costs borne by the operations pursuant to
7 state and federal water quality regulations.
- 8 (iii) Any costs associated with water quality monitoring
9 performed or funded by the operations.
- 10 (iv) Participation in a watershed management program approved
11 by the applicable regional board.

12 (D) In establishing the amount of a fee that may be imposed on
13 silviculture operations pursuant to this section, the state board shall
14 consider relevant factors, including, but not limited to, all of the
15 following:

- 16 (i) The size of the operations.
- 17 (ii) Any compliance costs borne by the operations pursuant to
18 state and federal water quality regulations.
- 19 (iii) Any costs associated with water quality monitoring
20 performed or funded by the operations.
- 21 (iv) The average annual number of timber harvest plans
22 proposed by the operations.

23 ~~(5)~~
24 (6) The state board or a regional board shall give notice of the
25 adoption of a waiver by publication within the affected county or
26 counties as set forth in Section 6061 of the Government Code.

27 (b) (1) A waiver in effect on January 1, 2000, shall remain valid
28 until January 1, 2003, unless the regional board terminates that
29 waiver prior to that date. All waivers that were valid on January
30 1, 2000, and granted an extension until January 1, 2003, and not
31 otherwise terminated, may be renewed by a regional board in
32 five-year increments.

33 (2) Notwithstanding paragraph (1), a waiver for an onsite sewage
34 treatment system that is in effect on January 1, 2002, shall remain
35 valid until June 30, 2004, unless the regional board terminates the
36 waiver prior to that date. Any waiver for onsite sewage treatment
37 systems adopted or renewed after June 30, 2004, shall be consistent
38 with the applicable regulations or standards for onsite sewage
39 treatment systems adopted or retained in accordance with Section
40 13291.

1 (c) Upon notification of the appropriate regional board of the
2 discharge or proposed discharge, except as provided in subdivision
3 (d), the provisions of subdivisions (a) and (c) of Section 13260,
4 subdivision (a) of Section 13263, and subdivision (a) of Section
5 13264 do not apply to a discharge resulting from any of the
6 following emergency activities:

7 (1) Immediate emergency work necessary to protect life or
8 property or immediate emergency repairs to public service facilities
9 necessary to maintain service as a result of a disaster in a
10 disaster-stricken area in which a state of emergency has been
11 proclaimed by the Governor pursuant to Chapter 7 (commencing
12 with Section 8550) of Division 1 of Title 2 of the Government
13 Code.

14 (2) Emergency projects undertaken, carried out, or approved
15 by a public agency to maintain, repair, or restore an existing
16 highway, as defined in Section 360 of the Vehicle Code, except
17 for a highway designated as an official state scenic highway
18 pursuant to Section 262 of the Streets and Highways Code, within
19 the existing right-of-way of the highway, damaged as a result of
20 fire, flood, storm, earthquake, land subsidence, gradual earth
21 movement, or landslide within one year of the damage. This
22 paragraph does not exempt from this section any project
23 undertaken, carried out, or approved by a public agency to expand
24 or widen a highway damaged by fire, flood, storm, earthquake,
25 land subsidence, gradual earth movement, or landslide.

26 (d) Subdivision (c) is not a limitation of the authority of a
27 regional board under subdivision (a) to determine that any
28 provision of this division shall not be waived or to establish
29 conditions of a waiver. Subdivision (c) shall not apply to the extent
30 that it is inconsistent with any waiver or other order or prohibition
31 issued under this division.

32 (e) The regional boards and the state board shall require
33 compliance with the conditions pursuant to which waivers are
34 granted under this section.

35 (f) Prior to renewing any waiver for a specific type of discharge
36 established under this section, the state board or a regional board
37 shall review the terms of the waiver policy at a public hearing. At
38 the hearing, the state board or a regional board shall determine
39 whether the discharge for which the waiver policy was established

1 should be subject to general or individual waste discharge
2 requirements.

3 *SEC. 3. If the Commission on State Mandates determines that*
4 *this act contains costs mandated by the state, reimbursement to*
5 *local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*

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